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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CARMEN JOHN PERRI, an individual,

Plaintiff,

v.

FOOD 4 LESS, a business of unknown
 form; OCEANGATE PROPERTY
 TWO, LLC, a California limited
 liability company; and Does 1-10,

Defendants.

Case No. 2:18-cv-03679-GW-JEM
 Honorable George H. Wu

JOINT RULE 26(f) REPORT

DATE: July 5, 2018

TIME: 8:30 a.m.

DEPT: 9D

Action Filed: April 30, 2018
 Trial Date: None Set

1 Plaintiff CARMEN JOHN PERRI (“Plaintiff”), FOOD 4 LESS (“Food 4
 2 Less”), and OCEANGATE PROPERTY TWO (“Oceangate”) respectfully submit
 3 this Joint Report (“the Report”) pursuant to Federal Rules of Civil Procedure Rule
 4 26(f).

5 **A. STATEMENT OF THE CASE**

6 **1. Plaintiff:**

7 Plaintiff is substantially limited in performing one or more major life
 8 activities, including but not limited to: walking, standing, ambulating, sitting and
 9 grasping objects. As a result of these disabilities, Plaintiff relies upon a wheelchair
 10 and other devices for mobility. With such disabilities, Plaintiff qualifies as a
 11 member of a protected class under the Americans with Disabilities Act (“ADA”), 42
 12 U.S.C. §12102(2) and the regulations implementing the ADA set forth at 28 C.F.R.
 13 §§ 36.101 et seq. Plaintiff is also the holder of a Disabled Person Parking Placard.

14 Plaintiff personally visited Defendants’ Property on one occasion but was
 15 denied full and equal access and full and equal enjoyment of the facilities, services,
 16 goods, and amenities within Defendants’ facility, even though he would be classified
 17 as a “bona fide patron.” Specifically, he desired to visit the subject property as a
 18 consumer, but experienced difficulty due to Defendants’ failure to provide adequate
 19 access to the subject business and its interior.

20 It is alleged that Defendants own and operate the real property located at
 21 14500 Ocean Gate Avenue, Hawthorne, CA 90250 (hereinafter “Property”) where
 22 the subject business (the “Business”) is located. It is alleged that Defendants are
 23 liable to Plaintiff for the alleged ADA violations.

24 The Business is a facility open to the public, a place of public accommodation,
 25 and a business establishment. Instead of having compliant designated disabled parking
 26 on the Property, Defendants have: a built up curb ramp that projects from the sidewalk
 27 and into the handicapped parking area (Section 406.5). Furthermore, the curb ramp is
 28 in excess of the 2% maximum grade allowed by ADAAG specifications (Section

1 406.1); a toilet paper dispenser that is too high; a door lock latch that requires tight
2 grasping; and a trash can in the restroom that obstructs proper clearance.

3 Plaintiff alleges that Defendants violated Plaintiff's rights under the ADA and
4 the Unruh Civil Rights Act. In addition to injunctive relief, Plaintiff seeks an award
5 of damages of not less than \$4,000 per violation as well as deterrence damages
6 arising out of Plaintiff's visit to the Property on or about April 9, 2018 and for
7 reasonable attorneys' fees litigation expenses, and costs of suit, pursuant to
8 California Civil Code § 52.

9 **2. Defendant Food 4 Less:**

10 Food 4 Less denies Plaintiff's allegations and denies that Plaintiff is entitled to
11 any relief whatsoever.

12 **3. Defendant Oceangate Property Two, LLC:**

13 Oceangate Property Two, LLC denies Plaintiff's allegations and denies that
14 Plaintiff is entitled to any relief whatsoever.

15 **B. LEGAL ISSUES**

16 **1. Plaintiff:**

17 The principal legal issues are: (1) whether Defendants are responsible under
18 the law to remove/ remediate barriers; (2) whether the Plaintiff has standing to seek
19 either damages or injunctive relief; (3) whether Plaintiff was denied equal access to
20 the facility and; (4) the nature and extent of Plaintiff's damages.

21 **2. Defendant Food 4 Less:**

22 The principal legal issues are whether: (1) Plaintiff lacks standing; (2)
23 Plaintiff's purported barriers claims are moot; (3) Plaintiff is entitled to any injunctive
24 relief; and (4) Plaintiff is entitled to any statutory damages.

25 **3. Defendant Oceangate Property Two, LLC:**

26 The principal legal issues are whether: (1) Plaintiff lacks standing; (2)
27 Plaintiff's purported barriers claims are moot; (3) Plaintiff is entitled to any injunctive
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1 relief; (4) Plaintiff is entitled to any statutory damages; and, (5) Oceangate Property
2 Two, LLC owns the premises in question.

3 **C. DAMAGES**

4 **1. Plaintiff:**

5 Plaintiff foresees statutory damages of not less than \$4,000 per violation
6 arising out of Plaintiff's visit to the Property, \$4,000 for deterrence damages
7 Plaintiff is entitled to pursuant to *Johnson v. Guedoir*, 218 F. Supp. 3d 1096; 2016
8 U.S. Dist. LEXIS 150740 (USDC Cal, E.D. 2016), and for reasonable attorneys'
9 fees and costs of suit pursuant to California Civil Code § 52. Plaintiff expects the
10 probable range of damages to be between \$8,000 and \$12,000 plus reasonable
11 attorneys' fees.

12 **2. Defendant Food 4 Less:**

13 Food 4 Less denies that Plaintiff is entitled to any damages whatsoever.

14 **3. Defendant Oceangate Property Two, LLC:**

15 Oceangate Property Two, LLC denies that Plaintiff is entitled to any damages
16 whatsoever.

17 **D. INSURANCE**

18 The Parties are unaware of insurance coverage applicable to this action.

19 **E. MOTIONS**

20 The Parties do not anticipate motions other than dispositive motions.

21 **F. COMPLEXITY**

22 This is not a complex case and the Manual for Complex Litigation should not
23 be used.

24 **G. STATUS OF DISCOVERY**

25 The Parties have not yet undertaken discovery. The parties intend to exchange
26 Initial Disclosure by July 20, 2018.
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H. DISCOVERY PLAN

The Parties do not anticipate any issues regarding ESI, privileged materials, or protective orders. The Parties do not request any changes to the limitations on discovery. The Parties propose expert disclosures be made four months after the scheduling conference. The Parties propose a non-expert and expert discovery cut-off seven months after the scheduling conference. The Parties propose a dispositive motion cut-off ten months after the scheduling conference.

1. Plaintiff:

Plaintiff intends to propound a set of Interrogatories, Requests for Admission and Requests for Production of Documents; to take the deposition of the Defendant and to conduct an expert site inspection as permitted and required by *Doran v. 7-Eleven Inc.*, (9th Cir. 2008) 524 F.3d 1034 and *Chapman v. Pier Imports (US) Inc.*, 631 F.3d 939 (9th Cir. 2011). Plaintiff intends to seek discovery related to: (1) the ownership and maintenance of the Business and Property, including the existence of any accessibility barriers and accessible routes; (3) history of changes or modifications to the Business and Property; (4) the feasibility of providing access to persons with disabilities.

2. Defendant Food 4 Less:

Defendant intends to propound document requests and interrogatories regarding Plaintiff's litigation history, standing, encounters with the alleged barriers, injunctive relief claims, and statutory damages. Defendant will also take the depositions of Plaintiff, Plaintiff's expert, and any percipient witnesses.

3. Defendant Oceangate Property Two, LLC:

Oceangate Property Two, LLC intends to propound document requests and interrogatories regarding Plaintiff's litigation history, standing, encounters with the alleged barriers, injunctive relief claims, and statutory damages. Oceangate Property

1 Two, LLC will also take the depositions of Plaintiff, Plaintiff's expert, and any
2 percipient witnesses.

3 **I. DISPOSITIVE MOTIONS**

4 The Parties anticipate filing motions for summary judgment or, in the
5 alternative, motions for summary adjudication after completing necessary discovery.

6 **J. ALTERNATIVE DISPUTE RESOLUTION ("ADR") PROCEDURE**
7 **SELECTION**

8 The parties have not yet engaged in any settlement negotiations. The Parties
9 select ADR Procedure No. 2 (court mediation panel).

10 **K. PRELIMINARY TRIAL ESTIMATE**

11 The trial is expected to take three to four days. The parties request a jury trial.

12 **L. TRIAL COUNSEL**

13 For Plaintiff: Joseph R. Manning, Jr., Michael J. Manning, and Craig G. Cote.

14 For Defendant Food 4 Less: Michael J. Chilleen and Gregory F. Hurley.

15 For Defendant Oceangate Property Two, LLC : Daniel P. Stimpert.

16 **M. INDEPENDENT EXPERT OR MASTER**

17 The Parties do not believe an independent expert or master is necessary.

18 **N. OTHER ISSUES**

19 None.
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1 Respectfully submitted,

2 Dated: June 21, 2018

3 MANNINGLAW, PC

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5 By /s/ Michael J. Manning
6 JOSEPH R. MANNING, JR.
7 MICHAEL J. MANNING
8 Attorneys for Plaintiff,
CARMEN JOHN PERRI

9 Dated: June 21, 2018

10 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

11
12 By /s/ Michael J. Chilleen
13 GREGORY F. HURLEY
14 MICHAEL J. CHILLEEN
15 Attorneys for Defendant,
16 FOOD 4 LESS

17 Dated: June 21, 2018

18 STIMPert & FORD, LLP

19
20 By /s/ Daniel P. Stimpert
21 DANIEL P. STIMPert
22 IAN J. FORD
23 Attorneys for Defendant,
24 OCEANGATE PROPERTY TWO, LLC
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